

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
PROCEDURAL POLICIES FOR LOCAL PROGRAM REVIEW**

**(Adopted December 3, 1992)
(Amended September 15, 1994)
(Amended September 15, 1997)
(Amended June 21, 1999)
(Amended March 19, 2001)**

Board Program Review Committees

1. Each regional Board Review Committee will set a standard meeting time and establish a calendar of meetings for the year. The Committee may set additional meetings outside its schedule to facilitate timely review of local programs.
2. The staff will draft the tentative agenda for each Board Review Committee. The staff will provide Committee members with staff reports and pertinent supporting materials for each local program on the agenda, fifteen (15) days prior to the Committee meetings.
3. At meetings, the Board Review Committees will hear presentations by staff and local governments in addition to reviewing reports and supporting materials.
4. The Committees will make recommendations to the Board based on evaluation of staff reports, supporting materials and testimony; or, it may find it necessary to request additional documentation from staff or the local government before making its decision and thus defer action. Staff will record minutes for each Committee meeting and incorporate the minutes as an addendum in the final staff report.

Preliminary Reviews

1. Upon request by a local government, a preliminary consistency review will be conducted provided the local program proposal is in final draft form, having been reviewed and recommended for adoption by the local planning commission or when requested as a part of the local planning commission workshop/review process.
2. Upon receipt of (1) a written request by the local government and (2) all proposed documents for review, the staff will evaluate the local government program using the consistency review checklist and will prepare a draft staff report.

3. The process for Board preliminary review of a local program proposal will be the same as for Final Reviews.

Final Reviews

1. The staff will evaluate each adopted local government program using the consistency review checklist or findings of the preliminary review, where applicable, and prepare a draft report. The draft staff report will include a staff recommendation relative to program consistency or inconsistency and the reasons behind such recommendation. The staff report will also include recommendations for local program modification that the staff believe are necessary for consistency and suggestions which are desirable for water quality protection but not necessary for consistency. Areas where additional information or clarification on the local program is needed will also be identified.
2. The draft staff report will be sent to the appropriate Board Review Committee and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The letter will notify the local government of its opportunity to address the Committee.
3. At its meeting, the Board Review Committee will hear a presentation by staff and by representatives of the local government, if in attendance. The Committee may find it necessary to request additional documentation from staff or the local government before making its recommendation. Based on the information in the draft staff report and testimony presented by staff and local government representatives, the Committee will make a recommendation for a finding by the Board. A final staff report will be prepared to include the Committee's recommendation. The minutes of the Committee's meeting will be added to the staff report as an addendum.
4. The staff will prepare the final staff report. The final report will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees to waive the full 20-day notice.
5. The Board will take into consideration the staff recommendation, the recommendation of the Board Review Committee, the findings of the preliminary review, where applicable, and testimony by the local government, both written and oral, in making a finding on local program consistency.
6. The Board may find it necessary to request additional documentation from staff or the local government. In such cases, the Board may elect to defer its finding until a later meeting.

7. When the Board determines that no changes are necessary for local program consistency, the Board will make a finding of consistency. The staff will notify the local government of the Board's finding in writing.
8. When the Board determines that changes are necessary for local program consistency, the Board may make a finding of provisional consistency or consistent with conditions and allow the local government to complete the necessary modifications within a prescribed period of time. As part of the finding, the Board will determine what changes are necessary and set a schedule for revising the local program. The staff will notify the local government of the Board's finding and the schedule in writing. Such notification shall also include the locality's right to appeal the Board's action.
9. When the Board determines a local program is inconsistent, the Board will make a finding of inconsistency. As part of the finding, the Board will determine what changes are necessary and set a schedule to allow the local government to make the necessary changes. The staff will notify the local government of the finding and schedule in writing. Such notification shall also include the locality's right to appeal the Board's action.

Review of Programs Found Provisionally Consistent, Consistent with Conditions, or Inconsistent

1. The staff will discuss with the local government its progress in making any program modifications identified by the Board at least ninety (90) days prior to the Board's deadline for necessary program modifications.
2. When a local government indicates it needs additional time and provides sufficient justification and a revised schedule to accomplish the necessary program modifications, its request shall be considered by the Board Review Committee which shall make a recommendation to the Board. Normally, the recommendation shall be considered as a "consent item" on the Board's agenda. However, a locality that disagrees with the Review Committee's recommendation may address the Board during its review of the matter.
3. Review of programs found provisionally consistent, consistent with conditions, or inconsistent will generally follow the steps for Final Reviews. Where the local government has accomplished all necessary program modifications, the staff may prepare a simplified staff report for both the Review Committee and the Board.
4. The Board Review Committee will evaluate the local government's program, consider the staff's recommendation and any testimony of the local government, if present, and make a

recommendation as to whether the program is consistent or inconsistent. If the local program is not consistent, the Committee shall identify remaining items that need to be addressed for consistency and recommend a new compliance date or recommend an extension of the deadline for completion of the necessary program modifications.

5. The Board will take into consideration the staff's recommendations, the recommendation of the Board Review Committee, and testimony by the local government in making a decision on local program consistency and/or extending or establishing a deadline.
6. In cases where the local government does not adopt the necessary program modifications and has not submitted sufficient justification or a revised schedule for accomplishing the changes, the matter will be scheduled for review and action at the next meetings of the appropriate Board Review Committee and the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any final review. The Board may defer action in order to consider additional information; make a finding of inconsistency and establish a final compliance date; or upon a finding of extraordinary circumstances request the Attorney General to enforce compliance with the Act and regulations.
7. In cases where a locality's program has been found inconsistent and the locality fails to correct the identified deficiencies within the established schedule, the matter shall be placed on the agenda of the next meeting of the Board. The Board may either defer action in order to consider additional information or request the Attorney General to enforce compliance with the Act and regulations.

Review of Modifications to Local Programs Found Consistent

1. The staff will evaluate any modifications to local government programs found consistent. Staff evaluations will occur in a timely manner after a modification is adopted by the locality. After evaluating program modifications, the staff will prepare a draft staff report addressing the modification. In addition to staff recommendations relative to program consistency or inconsistency, the staff analysis will include a recommendation relative to the program modification's status as either minor or major. The staff will refer to the "Guidelines for Determining Minor and Major Program Modifications" in making such recommendations.
2. Board review of program modifications will generally follow the steps for Final Review, including review and recommendation by a review committee. A minor modification may be considered as a "consent item" on the Board's agenda while a major modification shall be considered as a formal program review agenda item.

Guidelines for Determining Minor and Major Program Modifications

Minor Program Modifications

1. Minor modifications to a local program will generally include amendments that do not affect the application of the eleven performance criteria or the designation of Chesapeake Bay Preservation Areas and/or Intensely Developed Areas. Minor modifications would consist of any changes recommended for clarification in the Board=s consistency review of a local program and any additional changes that fall under the following general categories: process, clarification, reorganization, and specification. Local adoption of the civil penalties and civil charges provisions from the Act is considered as a minor amendment.
2. Minor modifications involving process are those that relate to a local government=s process for evaluating private development projects, such as changes to the timing of submissions or to the assignment of personnel responsible for review and approvals. For example, a local government may reorganize the community development departments and replace Engineering as the administrative authority over the locality=s site plan review process with Planning. Changes to the local ordinance to reflect such reassignments or other changes in the process are minor modifications. Changes to the local exception process that involve the reassignment of personnel or a new sequencing of review requests for exceptions will generally be considered as minor modifications. However, changes to the criteria for exceptions or required findings associated with development approval are considered to be major modifications.
3. Minor modifications involving clarification are generally "housekeeping" in character; correcting typographical errors, amending citations for reference material or other local land use documents as these are amended. Such modifications could also involve minor word changes to clarify the intent of ordinance requirements. Typically, clarifying changes are a result of the locality=s experience in implementing the ordinance.
4. Minor modifications involving reorganization are those that affect the structure and numbering of an ordinance text. For example, some local governments find it beneficial to group all exemption language in the Regulations into one section. Generally, all changes to an ordinance=s structure would be considered a minor modification. Minor modifications to local programs consisting solely of recodifications of local ordinances may be approved by the Executive Director without the need of consideration by the Board. The Executive Director shall document such changes through a letter to the locality acknowledging the local action.
5. Minor modifications involving specification are those that establish more information or detail for particular sections of an ordinance. For example, a local government may add specific standards to clarify how an applicant complies with the requirement to minimize impervious surface. These standards relieve the local administrator from having to interpret compliance on

a case-by-case basis. Other expected modifications of this nature would involve specifying information items required to be submitted as part of a site plan.

Major Program Modifications

1. Major modifications to a local program are generally those that revise (i) the designation of the local Chesapeake Bay Preservation Area or an Intensely Developed Area, (ii) the application of the eleven performance criteria or, (iii) the process for granting exceptions or administrative waivers.
2. Major modifications that revise the local Chesapeake Bay Preservation Area (CBPA) designation could involve changes to either the Resource Protection Area or Resource Management Area. For example, a local government may have initially designated the Resource Management Area based on a set linear distance from the RPA because no soils maps were available. When the soils information becomes available and the locality amends the Resource Management Area designation, the new designation requires a consistency review by the Board. Similarly, modifications or additions to locally designated Intensely Developed Areas will require Board review. A change to the boundary between the RPA and the RMA based upon a site specific delineation, as provided for in a local program ordinance that has been found consistent by the Board, is not considered as a program modification and is not subject to review. However, the deletion of an RPA feature from a site or the expansion or contraction of the CBPA boundary is a major modification.
3. Major modifications that revise the application of the eleven performance criteria could involve outright deletion of one of the standards from the local Bay Act ordinance or the amendment of the level of performance of one of the standards. For example, if a local government removes the stormwater management criteria from its Bay Act ordinance because it has a one acre minimum lot size in its subdivision ordinance, the local program would need to be reviewed by the Board. Similarly, if a locality amends the five-year pump-out requirement in the Regulations to a ten-year pump-out requirement in the local ordinance, the modification would be considered major and require a consistency review by the Board.
4. Modifications that substantially revise the local exception process will be considered major in nature. For example, changes to the exception process that expand the locality's administrative exceptions to include additional buffer encroachment, on lots created prior to the effective date of the local ordinance would require a consistency review by the Board.
5. Any modifications that do not qualify as minor will be considered major.

Interim Procedure for Reviewing Local Program Implementation

(DCR – CBLAB – 010)(12/05)

1. When the Department receives information regarding a concern over a local government's Bay Act program implementation, the Department will gather information from the local government regarding their local program implementation. After gathering information, the Department may determine that the local government's program implementation is consistent with the Act, the Regulations and its adopted ordinances. The Department may, however, determine that there are concerns with the local Bay Act program implementation and will work with the locality to rectify the concerns. When the identified concerns are not resolved at the staff level, the Department will bring the issue(s) to the appropriate Review Committee for their consideration.
2. The appropriate Board Review Committee will meet to discuss the local program implementation issue as presented by the Department. As with other program reviews and amendments, the local government will be notified in writing 15 days in advance of the scheduled committee meeting and will be provided with a copy of the staff analysis and meeting agenda. The meetings will be conducted in accordance with the requirements of the Administrative Process Act [' 9-6.14.11 of the Code of Virginia]. The Review Committee will forward its findings and recommendations to the Board.
3. The Board will determine compliance of local program implementation in accordance with the provisions of the Administrative Process Act. When the Board decides to determine such compliance, it will give the local government at least 15 days notice of its right to appear before the Board at a time and place specified for the presentation of factual data, argument, and proof as provided by ' 9-6.14:11 of the Code of Virginia. The Board will provide a copy of its decision to the local government. If any deficiencies are found, the Board will establish a schedule for the local government to come into compliance.
4. Any legal action to be undertaken by the Board to ensure consistent local program implementation shall be undertaken according to ' 9VAC10-20-260 of the Regulations. Before taking legal action against a local government to ensure compliance, the Board shall, unless it finds extraordinary circumstances, give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If the Board finds extraordinary circumstances, the Board may immediately request the Attorney General to enforce compliance with the Act and Regulations.